

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Minority (202) 225-3641

November 19, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Chairman Murphy:

We are writing to express our extreme disappointment in the process by which you are conducting the Committee investigation into the readiness and security of Healthcare.gov.

We have learned that the Republican majority received documents and information related to the investigation on Thursday, November 14, 2013, from a subcontractor hired by Centers for Medicare and Medicaid Services to conduct a March 2013 “pressure test” of the “trajectory of the federal marketplace.”¹ These documents were provided based on a request that was an outgrowth of an official Chairman’s request letter sent on October 31, 2013.²

Republican Committee staff did not provide any documents to the Democratic staff until four days after they were provided to the Committee. At this point, minority staff was provided with only a partial production of these materials on Monday afternoon, November 18, less than 24 hours before today’s hearing. Additional portions of this official document production were

¹ McKinsey & Company, *Red Team: Discussion document* (undated).

² Letter from Chairman Fred Upton, Chairman Emeritus Joe Barton, Chairman Tim Murphy, Chairman Joseph Pitts, Vice Chairman Marsha Blackburn, Vice Chairman Michael Burgess, Rep. Mike Rogers, and Rep. Bill Johnson to MITRE Corporation (Oct. 31, 2013).

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withheld from the minority and appear to have been shared with press prior to being shared with minority Committee staff.

Your failure to provide the minority with copies of relevant investigatory documents in a timely fashion runs counter to the longstanding practice of this Committee. It is also inconsistent with House Rule XI, which provides that "all committee records (including hearings, data, charts and files) ... shall be the property of the House and each Member, Delegate and the Resident Commissioner shall have access thereto."³ Additionally, the Rules prescribe that the ranking minority member "shall have access to information before a [investigative] subcommittee with which they so consult."⁴

Excluding Democratic members from timely access to the full Committee record calls into question the credibility and fairness of the Committee's inquiry.

We also observe that this is the second time in four days that you have leaked Committee investigative material to the press. Again, this is not the way the Committee traditionally operates, and we question your judgment in leaking this material without appropriate context, without the benefit of witness testimony to provide additional information, and in this latest case, without providing Democratic members timely access.

We urge you to reconsider your practices and ensure that Democratic members have access to the full Committee record in the future.

Sincerely,


Henry A. Waxman


Diana DeGette


John D. Dingell

³ Rules of the House of Representatives, Rule XI clause (e)(2)(A).

⁴ Rules of the House of Representatives, Rule XI clause (m)(C).